

FILED BY S D.C.

05 APR 19 PM 1:57

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

ROBERT R. DI TROIO
CLERK OF U.S. DIST. CT.
W.D. OF TN - JACKSON

CATHY TURNBOW,)
Plaintiff)
vs.) Civil Action No. 04-1239-T
JO ANNE B. BARNHART,)
COMMISSIONER OF)
SOCIAL SECURITY,)
Defendant)

FINAL JUDGMENT REVERSING COMMISSIONER AND
ORDERING REMAND UNDER SENTENCE FOUR OF 42 U.S.C. § 405 (g)

After reviewing the above-captioned case, agency counsel requested that the Appeals Council undertake further review of this case, which it agreed to do. Accordingly, the parties jointly propose that this case be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration and a new hearing.

IT IS THEREFORE ORDERED that the Commissioner's decision is reversed and the matter remanded under sentence four of 42 U.S.C. § 405(g) for further development. Upon remand, the Appeals Council will instruct the administrative law judge ("ALJ") to conduct a new hearing and issue a new decision, wherein he will properly evaluate the opinion of Plaintiff's treating physician, Stanley B. Kaplan, M.D., and specifically articulate the reasons for the weight given to such opinion. The ALJ did not mention Dr. Kaplan or indicate what weight, if any, was given to his opinion, nor did he include Dr. Kaplan's limitations within his residual functional capacity finding ("RFC"). Upon remand, the ALJ will also be instructed to re-contact Dr. Kaplan for clarification of his responses to a Physical Residual Functional Capacity Questionnaire dated November 11, 2003. Additionally, the Appeals Council will direct the ALJ to re-evaluate Plaintiff's ability to perform her past relevant work. The ALJ found that Plaintiff could perform her past work as a hand packager,

but according to the regulations, her earnings record shows that she did not perform that job at the level of substantial gainful activity.

Upon remand, the Commissioner shall take action consistent with the foregoing.

SO ORDERED.

19 April 2005

Date

James D. Todd

James D. Todd

United States District Court Judge

APPROVED BY:

Roger Stanfield
Roger Stanfield By JAD
P.O. Box 1146 By Consent
Jackson, Tennessee 38304-1146

Attorney for Plaintiff

TERRELL L. HARRIS

United States Attorney

By Joe A. Dycus
Joe A. Dycus (#008730 Tennessee)
Assistant United States Attorney
167 N. Main Street, 8th Floor
Memphis, Tennessee 38103
(901) 544-4231

Attorney for the United States



Notice of Distribution

This notice confirms a copy of the document docketed as number 17 in case 1:04-CV-01239 was distributed by fax, mail, or direct printing on April 20, 2005 to the parties listed.

Roger Stanfield
LAW OFFICE OF ROGER STANFIELD
P.O. Box 3338
Jackson, TN 38303--333

Joe A. Dycus
U.S. ATTORNEY'S OFFICE
167 N. Main St.
Ste. 800
Memphis, TN 38103

Honorable James Todd
US DISTRICT COURT